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COMMITTEE ON THE PEACEFUL USES OF OUTER SPACE

LEGAL SUB-COMMITTEE

Twenty-ninth session

SUMMARY RECORD OF THE 534th MEETING

Held at the Palais des Nations, Geneva
on Thursday, 12 April 1990, at 10.30 a.m.

Chairman: Mr. MIKULKA (Czechoslovakia)

CONTENTS

Organization of work (continued)

Matters relating to the definition and delimitation of outer space and to the character and utilization of the geostationary orbit, including consideration of ways and means to ensure the rational and equitable use of the geostationary orbit, without prejudice to the role of the International Telecommunication Union

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The meeting was called to order at 10.55 a.m.

ORGANIZATION OF WORK (continued)

1. The CHAIRMAN announced that he had received a communication from Peru in which the latter expressed its desire to take part in the meetings of the Sub-Committee. He recalled that the Committee on the Peaceful Uses of Outer Space alone could grant observer status to a country, and proposed that the Peruvian delegation be authorized to attend the official meetings of the Sub-Committee and to request the Chairman for permission to speak if it wished to make a statement. That practice had been followed in previous years when States non-members of the Sub-Committee had informed it that they wished to participate in its work. He said that if there were no objections he would take it that the proposal was adopted.

2. It was so decided.

MATTERS RELATING TO THE DEFINITION AND DELIMITATION OF OUTER SPACE AND TO THE CHARACTER AND UTILIZATION OF THE GEOSTATIONARY ORBIT, INCLUDING CONSIDERATION OF WAYS AND MEANS TO ENSURE THE RATIONAL AND EQUITABLE USE OF THE GEOSTATIONARY ORBIT, WITHOUT PREJUDICE TO THE ROLE OF THE INTERNATIONAL TELECOMMUNICATION UNION (agenda item 4)

3. Mr. RAO (India) said, with regard to the definition and delimitation of outer space, that there were several reasons why it was important to draw up a legal definition of outer space that clearly distinguished between outer space and airspace. The legal régimes concerning outer space and airspace were different in terms of both their governing principles and the applicable legal instruments. There was occasionally even incompatibility between the legal régime governing airspace, as defined, in particular, by the Chicago Convention and based on the principle of customary international law pursuant to which States exercised their sovereignty over the airspace situated above their national territory, and the legal régime governing outer space set out in the 1967 Treaty, which stipulated that outer space was the common heritage of mankind and that no State could appropriate it or claim sovereignty over it.

4. Once outer space had been clearly defined, it would be possible to consider the adoption, within the framework of the United Nations, of disarmament measures designed to put an end to the militarization of space. Moreover, since various instruments or arrangements relating to space were being prepared, and the matter of the compatibility of their provisions with those of the 1967 Treaty was likely to arise at one point or another, a generally accepted definition of outer space was desirable. The emergence of new forms of aerospace transport mentioned by the representative of the USSR should also spur the international community into establishing a definition of outer space.

5. Finally, if the numerous instruments relating to space, in particular the Outer Space Treaty, the Convention on International Liability for Damage Caused by Space Objects and the Principles Relating to Remote Sensing of the Earth from Space were to be strictly observed, a satisfactory definition of the concept of outer space was quite essential. Such a definition was a sine qua non for determining the legal status of the geostationary orbit (GSO) and in its absence it would be difficult to implement the principles relevant to the use of nuclear power sources in outer space, in particular principles 3 and 4.

6. There was thus no call to question the need to define and delimit outer space: that definition and delimitation were unavoidable both for legal and practical reasons. The immediate requirement was for countries to show the appropriate genuine political willingness. The time had come for the Sub-Committee to take a fresh look at the subject and to view it more constructively. Further postponement would only make it more difficult to consider a number of other questions relating to outer space. Once all States, and in particular those with massive space programmes, were genuinely prepared to seek a solution to that important issue, it would be possible to consider in detail the most appropriate criteria (in terms of altitude or even in functional terms).

7. His delegation supported the two most recent proposals by the Soviet delegation on the subject and would with an open mind examine any other proposal that might be put forward. The suggestion made by the USSR at the current session that outer space should be defined for purposes of aerospace transportation systems, without prejudice to a definition to be included in an agreement at an appropriate time, deserved careful consideration.

8. GSO was both an important and a limited natural resource, and there was no need to elaborate on its value for modern world communications. Unfortunately, the developing countries were at a disadvantage vis-à-vis the developed countries regarding the use of GSO, either because they lacked the capital or the necessary technology or simply because they were late-comers. It was essential to put an end to that inequitable situation by facilitating equitable access by all States to GSO and ensuring it was rationally used, especially for the benefit of the developing countries. In that connection it should be noted that all the equatorial countries were also developing countries.

9. In the view of the Government of India, the fact that GSO was part and parcel of outer space and consequently possessed the same legal status was no reason for failing to address legal questions connected with it. There was a need to elaborate a specific legal régime for GSO within the framework of the 1967 Outer Space Treaty, as had been done, for example, in the case of the Moon.

10. It was argued in some quarters that matters relating to GSO came within the competence of the International Telecommunication Union (ITU) and that there was no need for the Committee on the Peaceful Uses of Outer Space and its Legal Sub-Committee to address them. However, ITU dealt with the allotment of frequencies as well as a number of other technical matters and it was not its function to handle political and legal issues pertaining to the character of GSO or to study the principles on which its utilization was based. Such matters were the concern of the United Nations, which had entrusted consideration of them to the Committee on the Peaceful Uses of Outer Space and to its Legal Sub-Committee, while the Scientific and Technical Sub-Committee dealt with the specific physical characteristics of GSO.

11. At the previous sessions, delegations had stated their position. The working documents submitted by the equatorial countries and by the German Democratic Republic respectively had been examined, and the tabular form in which Indonesia had presented them had made it possible to compare them. At the preceding session of the Sub-Committee, a working document setting out the basic ideas advanced during the debates had been drafted at the initiative of

a number of developing countries. Consequently, it would be possible to develop those ideas at the current session and to develop specific issues that attracted a consensus, leaving other issues temporarily aside. For its part, his delegation was in a position to offer specific ideas within the Working Group or in informal consultations.

12. As a developing country interested in space science, technology and applications but at the same time opposed to any militarization of outer space, India considered that it was important, in the interests of all States, to agree on a universally binding legal definition of outer space and to establish an equitable legal régime relating to GSO. Such a step would encourage the exploration and use of space for peaceful purposes.

13. Mr. KOPAL (Czechoslovakia) recalled that the matter of definition and delimitation of outer space had been under consideration for many years, not only within the Legal Sub-Committee but also in various non-governmental bodies. It had been the subject of legal study even before space flights had begun. In his work on space law published in 1932, the Czechoslovak jurist Vladimir Mandl had pointed out the fundamental difference between the legal régime of airspace, based on the principle of exclusive sovereignty of States over the airspace superjacent to their territory and the legal régime of outer space based on the principle of freedom of exploration and utilization of the latter. In the 1950s, a well-known American expert, John Cobb Cooper, who had also addressed the issue, had proposed the adoption of the lowest stable perigee of the orbit of artificial satellites as the lower limit of outer space. In 1967, when the Outer Space Treaty, in which the concept of outer space was not defined, had been adopted, the Legal Sub-Committee had in turn given consideration to the issue, and had examined several possible criteria for delimitation, in co-operation with the Scientific and Technical Sub-Committee.

14. The still unresolved question of delimitation was essentially a political and legal matter, even though a number of scientific and technical criteria had to be taken into consideration. Failing a definition of the limit between airspace and outer space, his delegation was convinced that it would be possible to agree on the meaning of the expression "outer space" because, from the viewpoint of space law, there was a more urgent need to define where outer space began than to know where the airspace over which a State exercised its sovereignty ended. A universally accepted definition of outer space was required not only for theoretical but also for practical reasons. If outer space was to be used for exclusively peaceful ends and was to be protected as the heritage of mankind, while permitting its exploration and use for the benefit of and in the interests of all countries pursuant to article I of the 1967 Outer Space Treaty, it was essential for all States to agree as to the meaning of the concept of outer space. In addition, since an item relating to the application of the principle set out in article I of the treaty had been placed on the agenda of the Legal Sub-Committee, a new dimension, which the Sub-Committee could not ignore, had been added to the problem of delimitation.

15. His delegation had welcomed with considerable interest the proposal made by the Soviet delegation to study, under agenda item 4, legal problems connected with the forthcoming introduction of a new type of vehicle, capable of being used in airspace as aircraft and in outer space as spacecraft. An

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initial exchange of views could take place at the next session of the Legal Sub-Committee. Work connected with agenda item 4 would thus become more specific, as several delegations had requested.

16. With regard to the second part of agenda item 4, his delegation considered that GSO was an integral part of outer space, and in fact its most attractive component. Like any other section of outer space, GSO could not be appropriated by claim of sovereignty, by means of occupation or by other means. His delegation recognized that no State could claim rights of ownership or any preferential rights over GSO and considered that it was a limited natural resource to which all States should have equitable access in accordance with article 33 of the ITU Convention, signed at Nairobi in 1982. It should be noted that the Constitution of the International Telecommunication Union, adopted at Nice in 1989, did not yet contain that provision.

17. The Czechoslovak delegation considered that the recent World Administrative Radio Conference on the Use of the Geostationary Satellite Orbit had established a suitable mechanism for guaranteed access by all States to GSO. The efforts undertaken in that field by the Committee on the Peaceful Uses of Outer Space and by ITU should be considered as complementary, rather than contradictory or competitive. On the basis of valid principles governing the peaceful exploration and use of outer space, a set of rules more specifically concerned with the use of GSO could and in fact was being prepared, taking into account all the complexities of the problem, including the special needs of the developing countries and the geographical situation of certain States.

18. His delegation had closely followed the results of the efforts aimed at achieving a convergence of opinions among delegations on that point, and had studied with great care the ideas set forth in an unofficial working paper prepared by a number of member countries of the Group of 77. Of the elements contained in that document, it particularly appreciated paragraphs 3 and 5, provided that the last sentence of paragraph 5 were amended as follows in order to incorporate more fully the terms of article 33 of the ITU Constitution: "Special needs of the developing countries and the geographical situation of particular countries should be taken into account when ensuring equitable access to the geostationary orbit for all countries or groups of countries."

19. The Czechoslovak delegation shared the view that much remained to be done concerning the two components of agenda item 4 and associated itself with those delegations wishing to keep the item on the Sub-Committee's agenda.

20. Mr. REX (Federal Republic of Germany), noting that there had been little progress concerning either the definition and delimitation of outer space or the characteristics and utilization of GSO, confirmed that the position of his delegation remained essentially unchanged.

21. In connection with the delimitation of outer space, his delegation considered that the conclusion reached by the Scientific and Technical Sub-Committee in 1967, to the effect that no scientific and technical criteria could be found which would yield a precise and lasting definition of outer space, remained the scientific basis of the Sub-Committee's discussions. The fact was that there were no scientific criteria for the establishment of a

clear frontier between airspace and outer space, and any attempt at an exact delimitation could not fail to contain an element of arbitrariness, which would in turn inevitably create legal and practical uncertainties to the detriment of free and equal exploration and use of outer space. His delegation also continued to believe that it could not be convincingly demonstrated that there was a practical need for a definition or delimitation of outer space. On the contrary, the current situation had in no way affected the sovereignty, security or integrity of States and had if anything facilitated the development of space technology. Thus, while acknowledging the importance of the subject on a theoretical basis and perhaps with regard to future technical developments, his Government saw no reason for altering its position at that stage.

22. Mr. FRANCIS (Observer for the International Telecommunication Union - ITU) said that the regulation of the use of GSO had been and continued to be one of the major responsibilities of ITU. He summarized the work of ITU in connection with agenda item 4 since the preceding session of the Sub-Committee, and said that there had been no world administrative radio conference with an agenda relating specifically to space matters during the previous year. However, the Plenipotentiary Conference, the supreme organ of the Union, had decided at Nice in May-June 1989 to separate the Union's basic multilateral treaty - the International Telecommunication Convention - into two instruments, a constitution containing the basic provisions and a convention containing the remaining provisions. In that context, article 33 of the International Telecommunication Convention (as revised at Nairobi in 1982), which dealt inter alia with the use of GSO, had been embodied in the International Telecommunication Constitution with virtually no change.

23. He recalled that the principle of equitable rights for all countries in the use of GSO and the frequency bands allocated to the space radiocommunication services had first been established by the 1971 World Administrative Radio Conference for Space Telecommunications, and then incorporated into the International Telecommunication Convention in 1973. In accordance with that principle and with others relating to rational, efficient and economic use, the States members of ITU had made unremitting efforts to ensure equitable access to GSO for all countries, while maintaining the necessary flexibility in order to permit the use of new technologies to be developed.

24. Those objectives had been respected in the revised regulations, which included an Allotment Plan for the fixed-satellite service, had come into force on 16 March 1990 and were contained in the Final Acts of the World Administrative Radio Conference on the planning of space services using the geostationary orbit (ORB-88).

25. In the Allotment Plan, one orbital location within a predetermined arc for use with the frequency bands identified for allotment planning had been designated for the coverage of each country. That plan was the outcome of the search to find a balance between the various requirements and of attempts to guarantee, in practice, space in space for all, while conserving some flexibility for the application of future technological advances.

26. In that connection, he wished first to explain that the fixed-satellite service was a service via satellite which provided conventional point-to-point telecommunications such as telegraphy, data transmission and telephony, etc., and which used GSO most extensively.

27. Secondly, a crucial element in the harmonious occupancy of GSO was that of ensuring the required spatial separation for the prevention of unacceptable electromagnetic interference between the different radio frequencies used.

28. Thirdly, satellite services were classified into a number of different categories: fixed-satellite service; mobile-satellite services for land, maritime and aeronautical applications; radio determination and radio navigation-satellite services; and broadcasting-satellite services for which a World Assignment Plan in certain frequency bands had been completed in 1985.

29. Finally, even for a space station that did not provide a telecommunication service per se, radiocommunications ensured the necessary link between the satellite and the ground control station for the various functions of the spacecraft.

30. Interested delegations could obtain further information on the current activities of ITU in respect of space services by reference to its twenty-ninth Report on Telecommunication and the Peaceful Uses of Outer Space, a few preliminary copies of which were available for consultation.

31. In conclusion, he expressed the hope that the ongoing work of the Union on the use of GSO would be of some help in facilitating the work of the Sub-Committee, and reasserted the willingness of ITU to co-operate with the Sub-Committee and provide it with any further information or clarification that might be considered necessary.

The meeting rose at 11.45 a.m.

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COMMITTEE ON THE PEACEFUL USES OF OUTER SPACE

LEGAL SUB-COMMITTEE

Twenty-ninth session

SUMMARY RECORD OF THE 535th MEETING

Held at the Palais des Nations, Geneva,
on Thursday, 12 April 1990, at 3 p.m.

Chairman: Mr. MIKULKA (Czechoslovakia)

CONTENTS

General exchange of views (continued)

Consideration of the legal aspects related to the application of the principle that the exploration and utilization of outer space should be carried out for the benefit and in the interests of all States, taking into particular account the needs of developing countries

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The meeting was called to order at 3.20 p.m.

GENERAL EXCHANGE OF VIEWS (continued)

1. The CHAIRMAN said that the general exchange of views held at the present session had enabled delegations not only to make general comments on the items on the Sub-Committee's agenda and their interrelationship, but also to express their ideas on modern trends in the development of international space law and to indicate themes which might, some time in the future, become subjects of interest to the Sub-Committee.

2. Recalling that, at the 529th meeting on 3 April 1990, the Acting Chairman had drawn attention to General Assembly resolution 44/201 B, section III, which concerned the question of the venue of future sessions of the Sub-Committee, he said that, since no comments on the subject had been made during the general exchange of views, he would assume that the general feeling in the Sub-Committee was that the provisions of that resolution should be taken into account by the Committee on the Peaceful Uses of Outer Space, which would meet in New York in June 1990 and would, inter alia, make recommendations concerning the Sub-Committee's future work programme and the dates and venues of its meetings. If that assumption was correct, he would suggest that it should be reflected in the report on the work of the session.

3. Mr. VERESHCHETIN (Union of Soviet Socialist Republics) said that his delegation had no objection to the suggestion that the venue of future meetings of the Sub-Committee should be discussed in the Committee, since that was the normal practice in such matters. He also agreed with the Chairman's statement that no comments on the subject had been made during the general exchange of views. Now that the issue had been raised, however, he pointed out that the practice of holding the Sub-Committee's sessions in Geneva every other year had proved entirely justified in that it facilitated participation by a larger number of specialists, at least from European countries. His delegation was fully satisfied with the practice and would not wish to see it changed.

4. The CHAIRMAN said that the statement by the Soviet delegation was not in contradiction with the suggestion he had made concerning what should be reflected in the report.

5. Mr. CHAMBERLAIN (United Kingdom) said that he supported the Chairman's suggestion, but was not sure precisely what was to appear in the report on the question of venue. If, in addition to the Chairman's suggestion, the report was also going to reflect views which had been expressed, he would wish to put on record those of his delegation.

6. The CHAIRMAN said his understanding was that the report would indicate that no comments on the subject of venue had been made during the general exchange of views.

CONSIDERATION OF THE LEGAL ASPECTS RELATED TO THE APPLICATION OF THE PRINCIPLE THAT THE EXPLORATION AND UTILIZATION OF OUTER SPACE SHOULD BE CARRIED OUT FOR THE BENEFIT AND IN THE INTERESTS OF ALL STATES, TAKING INTO PARTICULAR ACCOUNT THE NEEDS OF DEVELOPING COUNTRIES (agenda item 5) (A/44/20; A/AC.105/C.430; A/AC.105/C.2/15 and Add.1-9; A/AC.105/C.2/16 and Add.1-8)

7. The CHAIRMAN drew the Sub-Committee's attention to chapter III of its report on the work of its twenty-eighth session (A/AC.105/430) and to paragraphs 100-107 and 122 (c) of the report of the Committee on the Peaceful Uses of Outer Space (A/44/20) relating to the item under consideration. In paragraph 4 (c) of its resolution 44/46, the General Assembly had recommended that the Sub-Committee at its present session, taking into account the concerns of all countries and particularly those of developing countries, should continue its consideration of that agenda item. At the beginning of the present session, the Sub-Committee had, in compliance with that resolution, established a Working Group on that agenda item and had agreed that it should begin its work during the Sub-Committee's next sesson in 1991. As to the chairmanship of the Working Group, it had been brought to his attention that, as stated in paragraph 112 of the report of the Scientific and Technical Sub-Committee on the work of its twenty-seventh session in 1990 (A/AC.105/456), the Group of 77 had nominated Mr. Raimundo González (Chile) as candidate for the office of Chairman of the Working Group. If he heard no objection, he would take it that the Sub-Committee decided to appoint Mr. González Chairman of the Working Group on agenda item 5.

8. It was so decided.

9. The CHAIRMAN recalled that, pursuant to the decision taken by the Committee on the Peaceful Uses of Outer Space at its 1988 session, the Secretary-General had addressed a note verbale to Member States inviting them to submit their views on the priority of specific subjects under the agenda item under consideration and to provide information on their national legal frameworks, if any, relating to the development of the application of the principle contained in article 1 of the 1967 Outer Space Treaty. Replies to that note received from Member States were to be found in document A/AC.105/C.2/15 and Add.1-9, which was before the Sub-Committee.

10. In addition, pursuant to the recommendation which the Sub-Committee had agreed on at its preceding session and had been endorsed by the General Assembly in paragraph 5 of resolution 44/46, the Secretary-General had addressed a note verbale to Member States inviting them to submit their views on the subject of international agreements which Member States had entered into and which were relevant to the principle that the exploration and use of outer space should be carried out for the benefit and in the interests of all countries, taking into particular account the views of developing countries. Replies to that note received from Governments were reproduced in document A/AC.105/C.2/16 and Add.1-8, which was also before the Sub-Committee.

11. Mr. GONZALEZ (Chile) thanked the Legal Sub-Committee for appointing him Chairman of the Working Group. He hoped to ensure that the discussion of the legal aspects of international co-operation in outer space activities would be fruitful.

12. In 1987, his delegation had advanced a number of ideas, incorporated in document A/42/185, that had been intended to provoke discussion, and they were still pertinent today. At the Legal Sub-Committee's twenty-sixth session, the Group of 77 had submitted document A/AC.105/C.2/L.162 entitled "Consideration of the legal aspects related to the access of States to the benefits derived from the exploration and utilization of outer space". The document had put forward the fundamental concept that it was necessary to find basic legal and political parameters for access by all States to the benefits of outer space activities. There was a larger issue to be considered as well: international co-operation in space activities, both in outer space itself and in respect of the ramifications of such activities on Earth. A number of the issues raised in document A/AC.105/C.2/L.162 could be used to generate a general exchange of views with a view to defining fundamental concepts. For example, paragraph 5 of that document referred to co-operation as a key element in activities undertaken by governmental, non-governmental and transnational entities in outer space and as being intimately linked to the progressive development of relevant legal regulations, which must keep pace with developments in technology and fill the lacunae in the existing international instruments.

13. The Group of 77 thus wished first and foremost to establish an adequate legal framework, leaving international co-operation in outer space activities to the discretion of countries themselves for the time being.

14. Mr. RAO (India), referring to the question of how the Legal Sub-Committee could best utilize the time allocated to agenda item 5 at the current session, said he believed that it could usefully engage in a free and frank exchange of views and try to give the Working Group a focus for its efforts at future sessions. In that connection, he fully endorsed the general outline of work suggested by the Chairman of the Working Group.

15. Ways and means of developing international co-operation had to be discovered to ensure that the benefits of the exploration and use of outer space were accorded to all States. Everyone was aware that the benefits of outer space were already being utilized. The Sub-Committee and the Working Group therefore had to determine whether account was being taken of the interests of all States, particularly those of the developing countries. In that connection, the question of co-operation was extremely important and the developing countries were fully committed in that regard. They therefore looked forward to a constructive debate on that issue. At the present session, they had had an opportunity to familiarize themselves with the nature of the topic and to focus on the various forms of international co-operation with a view to taking part in the Working Group's discussions. His delegation was confident that, under the chairmanship of Mr. González, the Working Group would conclude its task successfully.

16. Mr. RASHKOW (United States of America), referring to the Chairman's comment on the question of the venue of future sessions of the Sub-Committee asked whether the secretariat could make available the documents to which section III of General Assembly resolution 44/201 B referred and, in particular, the relevant paragraphs of the ACABQ report.

17. The CHAIRMAN said that the secretariat would endeavour to make the texts available in the course of the following week.

18. Mr. BOYER (France) said that his delegation fully supported the principle of alternating the sessions of the Sub-Committee between New York and Geneva.

19. The CHAIRMAN said that, if he heard no objection, he would take it that the Sub-Committee decided to request the Committee to discuss the question of venue.

20. It was so decided.

The meeting rose at 4 p.m.

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COMMITTEE ON THE PEACEFUL USES OF OUTER SPACE

LEGAL SUB-COMMITTEE

Twenty-ninth session

SUMMARY RECORD OF THE 536th MEETING

Held at the Palais des Nations, Geneva,
on Tuesday, 17 April 1990, at 10.30 a.m.

Chairman: Mr. MIKULKA (Czechoslovakia)

CONTENTS

Consideration of the legal aspects related to the application of the principle that the exploration and utilization of outer space should be carried out for the benefit and in the interests of all States, taking into particular account the needs of developing countries (continued)

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The meeting was called to order at 10.50 a.m.

CONSIDERATION OF THE LEGAL ASPECTS RELATED TO THE APPLICATION OF THE PRINCIPLE THAT THE EXPLORATION AND UTILIZATION OF OUTER SPACE SHOULD BE CARRIED OUT FOR THE BENEFIT AND IN THE INTERESTS OF ALL STATES, TAKING INTO PARTICULAR ACCOUNT THE NEEDS OF DEVELOPING COUNTRIES (agenda item 5) (continued) (A/AC.105/430, A/44/20, A/RES/44/46, A/AC.105/C.2/15 and Add.1 to 9, A/AC.105/C.2/16 and Add. 1 to 8)

1. Mrs. GARCIA (Mexico) said that in 1986, when its deliberations on the drafting of principles relating to remote sensing were coming to an end, the Sub-Committee had begun to discuss the choice of the new question of codification which it was to include in its agenda. The choice was not easy, partly in view of the large number of proposals submitted, but primarily because of the scepticism of some delegations with regard to the need to continue the progressive development of outer space law, which was none the less the cornerstone of the Sub-Committee's mandate. In her delegation's view, even before completing the draft principles on the use of nuclear energy sources in space, the Sub-Committee should consider including new topics in its agenda in order to ensure that the elaboration of outer space law should keep up with the increasingly rapid progress of scientific and technical developments in the outer space field.

2. No one could be unaware that the wording of item 5 of the Sub-Committee's agenda was the outcome of a compromise which, on the one hand, was based on the terms of article I of the Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies (1967 Outer Space Treaty) and which, on the other hand, emphasized the needs of the developing countries - an emphasis which was of course by no means fortuitous.

3. Although the wording of the new agenda item was based on that of article I of the 1967 Outer Space Treaty, the question arose, because of its general character, of the precise scope to be given to consideration of the item and the objectives to be pursued in that context. In her delegation's view, there was no doubt that, under the mandate entrusted to it for the progressive development of the provisions of international space law, the Legal Sub-Committee should devote itself, under item 5 of its agenda, to finalizing norms which would contribute to implementation of the principle that all activities relating to the exploration and utilization of outer space should be for the benefit and in the interests of all States.

4. In that connection, her delegation considered that, despite the usefulness of the information communicated by various States regarding their national legislation and the international agreements to which they had acceded in the space field, it would be even more helpful if all States, and in particular those with a space capability, were to indicate to the Secretary-General of the United Nations the areas of activity which were, in their view, suitable for international co-operation based on the utilization of outer space for exclusively peaceful purposes.

5. In conclusion, her delegation expressed its conviction that, at a time when the Cold War was beginning to give way to a climate of greater confidence between nations, the Sub-Committee should contribute to the development of an atmosphere of understanding in which space activities would be considered as a joint effort on the part of the international community rather than as a form of the struggle for supremacy between certain States.

6. Mr. ANDRADE (Brazil) recalled that, at the twenty-seventh session of the Sub-Committee, his delegation had expressed its satisfaction at the adoption of the wording of the new agenda item 5 as proposed by the Austrian delegation. The long negotiations and the efforts to reconcile diverging points of view which had led to the adoption of that wording were themselves a concrete proof of the spirit of compromise and international understanding prevailing in the field of outer space. His delegation was also highly gratified at the election, at the current session, of Mr. Raimundo Gonzalez, Head of the Chilean delegation, to the chairmanship of the Working Group engaged on consideration of item 5.

7. The Brazilian delegation had also followed with great attention and appreciation the statements of representatives of various groups of countries which emphasized the importance of international co-operation, not only in surmounting the obstacles to economic and technical development but also - and especially - in promoting space activities, since it considered that those statements demonstrated the universal validity of the principle set forth in article I of the Outer Space Treaty of 1967.

8. In fact, Brazil's programme of space activities could not be dissociated from international co-operation. Since the launching of the programme in the early 1960s, the intense effort to make full use of human resources had led to the participation of Brazilian scientists and technicians in a number of training programmes and joint scientific experiments with the United States of America, France, the Federal Republic of Germany and Argentina. The varied activities (meteorological research and research into the atmosphere and the magnetosphere, reception and processing of remote sensing satellite images, development of sounding rockets, etc.) carried out in the context of international co-operation programmes had made it possible to train a whole generation of Brazilian experts in the space sciences.

9. His Government was firmly convinced that it was essential to strengthen international co-operation in the field of space sciences in order to enable the developing countries to benefit from their applications. Although Brazil was itself a developing country with limited financial resources, it was responsible for 25 per cent of the long-term fellowships offered under the space applications programme of the United Nations, whereby experts from developing countries were receiving training at the Institute for Space Research (INPE), a Brazilian Government body responsible for research-and-development and training.

10. The common element in all of Brazil's agreements regarding space activities was that international co-operation concerned exclusively the peaceful uses of outer space. Brazil also regarded its space activities carried out jointly with other countries as an integral and important component of its foreign policy, in the sense that they were a valuable factor

in strengthening trust, openness and friendship. In that spirit, joint space activities could be considered as a contribution to international peace and security, and also to the promotion of social and economic development.

11. The concept of international co-operation was embodied in all the five Treaties dealing with outer space, and particularly the 1967 Treaty. The importance of the new agenda item derived from its links with the principle enshrined in article I of that Treaty, which stated that "the exploration and use of outer space ... shall be carried out for the benefit and in the interests of all countries, irrespective of their degree of economic or scientific development, and shall be the province of all mankind". The article also stated that "space shall be free for exploration and use by all States, without discrimination of any kind, on a basis of equality" and that "States shall facilitate and encourage international co-operation in such investigation". In that wide context, his Government considered that the consideration of item 5 offered an opportunity for analysing the existing international and national legal instruments in the space field and of studying international practices and procedures regarding co-operation with a view to extracting therefrom the guidelines which would serve as a legal framework for the development of international co-operation in space.

12. The identification of issues to be dealt with under item 5 was a difficult exercise in which unnecessary confrontations should be avoided. The aim was to identify the areas of activity which were of greatest interest to all States, and particularly the developing countries. The Working Group should therefore focus its attention on adequate, positive and constructive proposals which reflected the developing countries' needs in connection with international co-operation in space. In his delegation's view, it would be extremely useful, for instance, to initiate a debate on the legal aspects of the matter of developing a set of general principles concerning the dissemination of space technology as a whole, including hardware, launching, the training of experts and access to data banks. That procedure seemed to his delegation the best way to secure the participation of all countries in the study of international co-operation in space. It would make it possible to define the general objectives of co-operation, to discuss the scope of co-operation programmes and subsequently to establish guarantees or other appropriate mechanisms for the application of space technology.

13. That goal was particularly urgent if it was borne in mind that, especially, since 1987, restrictive policies regarding international co-operation had been adopted in respect of certain essential areas of the exploration and utilization of space, particularly the area of access to outer space. A frank and open discussion on that question was therefore needed in order to ensure that the legitimate concerns of all parties involved in international space co-operation - both States with major space capabilities and those benefiting from co-operation programmes - were duly taken into account.

14. Mr. OWOSENI (Nigeria) said that his delegation welcomed the establishment, at the current session, of the Working Group to consider item 5 of the Sub-Committee's agenda. Since the Chilean delegation, together with those of Yugoslavia and Nigeria, had spearheaded the initiative of the Group of 77 on that issue, his delegation also welcomed the election of Mr. Raimundo Gonzalez (Chile) to the chairmanship of the Working Group.

15. The new agenda item represented both an opportunity and a challenge to all members of the Sub-Committee. It was an opportunity, first of all, for the developing countries to define the concepts of "benefits" and "interests" as they affected themselves and to analyse what concrete benefits they expected to obtain through the exploration and utilization of outer space. Then it was a challenge for the major space Powers and other technologically developed countries to demonstrate by deeds their commitment to the principle of international co-operation which they had so often affirmed in their statements and to seek practical ways of extending the benefits accruing from space activities to all countries and, in particular, the developing countries.

16. The exploration and utilization of space had positive repercussions in a very wide range of human activities, and the knowledge acquired in that area had notably increased the resources available to the developed countries for resolving a large number of scientific, technological, socio-economic and ecological problems. Thus, the application of space technology had not only galvanized development but had also enhanced the well-being of the industrialized societies. Unfortunately, three decades after the beginnings of the conquest of space, the majority of mankind which lived in the developing countries had yet to experience its positive effects. The wide gap between the developed and developing countries in terms of scientific and technological development, and the lack of material and industrial resources from which the latter group of countries was suffering, gave rise to inequality of access to space science and technology, thus confining space exploration and utilization and the attendant benefits to a small minority of States. To eliminate that inequality, a global approach based on three elements must be firmly established: the common interests of mankind, international co-operation, and acceleration of the socio-economic progress of the developing countries. Furthermore, that approach must be given concrete expression by the construction, as part of international space law, of a legal framework to ensure the equal access of all States to the benefits of space activities, guaranteeing that those activities were carried out for the "benefit" and in the "interests" of all countries and fostering the necessary co-operation to achieve those objectives and the growth of the developing countries.

17. After quoting article I of the 1967 Outer Space Treaty, he pointed out that the guidelines for consideration of agenda item 5 were essentially laid down in that Treaty and in other pertinent international legal instruments adopted under United Nations auspices. The concepts of "benefit" and "interests", "non-discrimination", "equality of access" and "international co-operation", were among those which should be studied and clarified, in that connection, in order to arrive at an objective conclusion. Account should also be taken of the close relationship between the right of physical access to outer space on the one hand, and universalization of the benefits derived from space exploration on the other.

18. Regarding the methodology for consideration of the agenda item, his delegation's position was very flexible. Various proposals had been advanced, focusing in particular on the systematic study of the relevant principles and rules of existing international space law, on an analysis of national, bilateral, regional and international instruments on space exploration, and on the examination of treaties, conventions, agreements, principles, declarations

and resolutions which would provide the necessary international legal framework. Some delegations had also taken the view that a study of the relevant international legal instruments should be carried out by the Secretariat of the United Nations or by the Sub-Committee itself.

19. A reading of the reports transmitted to the Secretary-General by States (A/AC.105/C.2/15 and Add.1 to 9 and A/AC.105/C.2/Add.16 and Add.1 to 8) had led his delegation to the following conclusions: firstly, not all States, particularly developing countries, had adopted national space legislation relevant to the new agenda item, and it would therefore be pointless to await the submission of reports on such legislation before commencing work on the item; secondly, between the developing countries themselves there were significant disparities in the level of scientific and technological development in the space field, since, while some countries had already embarked on such activities and had acquired a certain amount of scientific and technical knowledge in that area, others were currently facing urgent problems of poverty, illiteracy, famine and ecological disaster, and had therefore yet to start out on that important road.

20. His delegation believed that the benefits and interests to be derived from the exploration and utilization of outer space could assist the developing countries in overcoming most of the difficulties with which the majority of them were confronted. It also considered that those difficulties were exacerbated by a lack of scientific and technological knowhow and a lack of the necessary resources to cope with them. In order to help redress the inequalities and to put mankind as a whole on the path to co-operation and development in the interests of all States, the Legal Sub-Committee should seize the opportunity and rise to the challenge represented by the new agenda item. In his delegation's view, the Sub-Committee's attention should therefore focus primarily on the following areas of activity: (1) the establishment of an appropriate international framework to provide the developing countries with a core of national resources in the field of space science and technology; (2) the institutionalization of exchange of information and scientific and technical equipment between developed countries with a space capability and developing countries; (3) the launching of joint ventures or partnerships between the space Powers and the developing countries in various spheres of space science and technology; (4) the establishment of an international framework ensuring easy accessibility to and cheap availability of various items such as remote sensing data, ground receiving stations and digital image processing systems; (5) the creation of a global network of technical assistance to accelerate the establishment of a national infrastructure in the space field and to promote the acquisition of space technology, and the establishment of a pool of technicians ("space peace corps") to facilitate the transfer of technology to the developing countries; and (6) the establishment of appropriate machinery to ensure the rapid and efficient redistribution of the spin-off benefits of space science and their applications to developing countries, without discrimination. In the light of those proposals, his delegation awaited with interest the commencement of discussion in the Working Group on the ways and means of realizing the priorities and objectives he had just outlined.

21. Mr. HE QIZHI (China) said that, since it was both a developing country and a space nation, China was firmly attached to the principle of the "common interest" affirmed in the first paragraph of article I of the 1967 Outer Space Treaty, which stated that "the exploration and use of outer space ... shall be

carried out for the benefit and in the interests of all countries, irrespective of their degree of economic or scientific development, and shall be the province of all mankind". Unlike some delegations which regarded the wording of that article as too vague to have binding force and as being more in the nature of a preamble, his own delegation regarded it as a basic article having a specific content, and it therefore considered that, in accordance with the Vienna Convention on the Law of Treaties, the provisions it contained were of a mandatory nature.

22. In order to promote implementation of the principle of the "common interest", the legal nature of outer space must be carefully defined. It should be fully clear from the start that space was neither a res nullius nor indeed a res communis - a notion which did not imply the obligation to utilize it for the benefit of all mankind - but rather a res communis humanitatis.

23. In practice, as many countries recognized, implementation of the "common interest" principle was achieved primarily through the strengthening of international co-operation, which could take different forms. Mention might be made, for example, of the co-operation activities carried out under the auspices of intergovernmental bodies such as the European Space Agency (ESA), an extremely vigorous and highly competitive body which had enabled its members to obtain results which would be beyond their reach if they had acted separately, or the International Organization of Space Communications, "INTERSPUTNIK", established by the Soviet Union and the countries of Eastern Europe, which had already achieved considerable success. The establishment of bodies of that kind was undoubtedly a worthwhile means for States to share the benefits deriving from the utilization of advanced space technology. International co-operation could also take place within the context of intergovernmental bodies of another kind which brought together the telecommunications administrations of the member countries and, possibly, scientific bodies designated by the Governments of those countries. That was the case, for example, with the International Maritime Satellite Organization (INMARSAT) and the International Telecommunications Satellite Organization (INTELSAT). States were also co-operating as members of international bodies providing public interest services. The meteorological information network of the World Meteorological Organization, for example, was extremely useful to the various national meteorological services in making their forecasts. Finally, mention should be made of the co-operation activities undertaken under bilateral agreements; they basically concerned remote sensing activities which, depending on the countries concerned, were the responsibility of either public bodies or private enterprises. In the United States, for example, the remote sensing satellite originally managed by NASA (National Aeronautics and Space Administration), was currently being operated by a private undertaking. On the other hand, the French remote sensing satellite was operated by the National Space Research Centre, while in the Soviet Union all remote sensing activities were undertaken by the State.

24. It was now appropriate to give serious consideration to the most effective form of international co-operation to promote application of the "common interest" principle, which might take a form totally different from the existing forms of co-operation which he had briefly listed with the sole aim of providing the Sub-Committee with food for thought.

25. In conformity with the compromise solution adopted at the last session, consideration of item 5 would take place in four stages: firstly, consideration of the provisions of domestic law intended to ensure application of the principle of the "common interest"; secondly, consideration of the international agreements embodying that principle; thirdly, consideration of information obtained and the results of the discussion on the issue in a working group established for that purpose no later than the thirtieth session; fourthly, continued consideration of the question within the working group until the Sub-Committee concluded that the deliberations had reached a satisfactory outcome. The process of consideration should lead to the drafting of a legal instrument acceptable to all. To fulfil that task, the Sub-Committee should refrain from establishing a deadline. It in fact needed time if it were to be in a position to carry out the necessary consultations and to succeed in arriving at a consensus, which was its normal practice.

26. Mr. YOUNIS KHAN (Pakistan) reminded the meeting of the three issues which his Government wished to see examined under item 5: the question of drawing a distinction between the space-related activities of States and their Earth-related activities on the one hand, and between "the utilization of space" and "the utilization of objects", for the exploitation of resources, on the other; the drafting of an international agreement for application of the principle by which space was to be used for the benefit and in the interests of all countries and the establishment of a framework for the equitable sharing of the benefits arising from space activities; and finally, the promotion of international co-operation, according particular attention to the developing countries in order to enable them to participate in international space programmes. He proposed that the Legal Sub-Committee consider a fourth topic for discussion concerning the need to regulate, through appropriate international legal machinery, remote sensing, communications and other activities carried out in space by the space Powers, in order to safeguard the rights, natural resources and sovereignty of all States, and particularly of those with very restricted capabilities in the space field.

27. Mr. von SCHUBERT (Federal Republic of Germany) expressed his belief that the Legal Sub-Committee now had a very clear idea of how to proceed with the consideration of item 5 of its agenda. At its preceding session, its members had in fact accepted the compromise solution which consisted in considering the matter in four stages by establishing in 1990 a working group which would begin its deliberations the following year, a method of work which the General Assembly had approved in its resolution 44/46 of 8 December 1989.

28. His delegation had made it known at the preceding session of the Sub-Committee that it was ready to participate in the Working Group's discussions, and in particular in the consideration of domestic legislation intended to promote implementation of the principle set forth in article I of the 1967 Outer Space Treaty and the international agreements embodying that principle. For its part, it had already set out in detail the provisions which the Federal Republic of Germany had adopted at national level to comply with its international obligations.

29. Efforts had also been made to gather and communicate information on the provisions of international space law. The Institute for Air and Space Law at the University of Cologne had published the first part of a compendium of the principal relevant legal instruments. Volume 1 of the compendium, in the

English language, dealt with instruments of the "classical" type prepared within the framework of the United Nations, and with space-related legal issues, more specifically with direct broadcasting by satellite, remote sensing, environmental protection, geostationary satellite orbiting and the use of outer space for peaceful purposes. Volume 2 would cover the competent international organizations (INMARSAT, ESA, etc.) and with international co-operation activities and national legislation. A copy of the first volume had been sent to the Secretariat, which would make it available to delegations.

30. He hoped that the compilation would be useful to the Sub-Committee and would enable it, together with the information obtained from other delegations, to carry out a thorough analysis of space law and its state of development, devoting particular attention to the situation of the developing countries.

The meeting rose at 12 noon.

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COMMITTEE ON THE PEACEFUL USES OF OUTER SPACE

LEGAL SUB-COMMITTEE

Twenty-ninth session

SUMMARY RECORD OF THE 537th MEETING

Held at the Palais des Nations, Geneva,
on Thursday, 19 April 1990, at 10.30 a.m.

Chairman: Mr. MIKULKA (Czechoslovakia)

CONTENTS

Consideration of the legal aspects related to the application of the principle that the exploration and utilization of outer space should be carried out for the benefit and in the interests of all States, taking into particular account the needs of developing countries (continued)

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The meeting was called to order at 10.50 a.m.

CONSIDERATION OF THE LEGAL ASPECTS RELATED TO THE APPLICATION OF THE PRINCIPLE THAT THE EXPLORATION AND UTILIZATION OF OUTER SPACE SHOULD BE CARRIED OUT FOR THE BENEFIT AND IN THE INTERESTS OF ALL STATES, TAKING INTO PARTICULAR ACCOUNT THE NEEDS OF DEVELOPING COUNTRIES (agenda item 5) (continued) (A/AC.105/430, A/44/20, A/RES/44/46, A/AC.105/C.2/15 and Add.1 to 9, A/AC.105/C.2/16 and Add.1 to 8)

1. Mr. CANDIOTI (Argentina) said that his delegation was gratified by the agreement to establish a Working Group to analyse the agenda item under consideration, and by the recent election of the chairman of the group. It also wished to thank all those delegations which, like that of Austria, had shown a constructive attitude, with regard both to the inclusion of the item on the Sub-Committee's agenda and to the procedure adopted for handling it. The Argentine delegation considered that the replies received from Governments concerning national legal frameworks for co-operation in space, the relevant international agreements concluded, and the topics to be dealt with on a priority basis provided sufficient information to progress to a new stage involving an in-depth analysis of the legal aspects of co-operation in that area with a view to preparing the appropriate standards and criteria. He recalled in that connection that the reply by his own Government appeared in document A/AC.105/C.2/15/Add.3.

2. As the Sub-Committee appeared to have settled the question of its method of work, his delegation wished to present certain of its views regarding discussion of the main issues of the new topic. As it had pointed out at the previous session, the fundamental objective of the Sub-Committee was to establish explicitly the unequivocally operational nature of the principle that international co-operation should guarantee equitable access by all States to space activities. The international agreements laying down the relevant general principles had already been mentioned during the discussions. The present need was to advance towards a definition of the field of application of certain concepts appearing in article I of the Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, Including the Moon and Other Celestial Bodies (1967 Outer Space Treaty), in particular the terms "exploration" and "use" of outer space. Once those concepts had been satisfactorily defined, it would be necessary to specify the scope of the expression "for the benefit and in the interests of all countries" and, in the context of such an analysis, to take into particular account the needs of developing countries, in accordance with the wording of the item on the Sub-Committee's agenda.

3. His delegation believed that the objective set out in article I of the 1967 Outer Space Treaty should be achieved by broad international co-operation, as explicitly provided in the third paragraph of that article. However, the areas in which such co-operation could operate had yet to be defined. A useful approach to that question was to be found in paragraph 5 of document A/AC.105/C.1/WG.6/L.4 submitted by the Group of 77 at the previous session of the Scientific and Technical Sub-Committee, which contained a non-exhaustive list of possible uses of space technology constituting appropriate subjects for international co-operation.

4. With regard to the means of putting such co-operation into effect - without prejudice to the possibility of drawing in due time other corollaries from the general principle set out in article I of the 1967 Outer Space Treaty - his delegation considered that the norm mentioned in that article entailed at least two specific obligations, namely the obligation to share equitably the results of the exploration and use of space and the obligation to protect the space environment. It was important to reassert that international co-operation in that sphere should be based on fair, non-discriminatory foundations and on broad technical assistance, and should give the developing countries specific opportunities to acquire the knowledge and techniques necessary for their own overall development, including development in space. In that connection the delegation of Nigeria had put forward a valuable proposal with regard to the possible institutionalization of a balanced system for the exchange of data, information, material and equipment relating to space science and activity, in which space Powers and developing countries would participate.

5. His delegation also felt that one aspect of international co-operation in space that deserved priority was scientific and technical training, in order to ensure that the developing countries in particular possessed the human resources required to make progress in that field.

6. As the use and exploration of outer space were the province of all mankind, they should be carried out in a rational manner. An issue of such importance as that of space debris should receive timely attention within the framework of the Sub-Committee, as there was an increasing risk of such pollution jeopardizing the future space activities of all States, especially the developing countries.

7. Finally, it was to be hoped that the Working Group to be convened as from 1991 would make a constructive contribution to defining the legal framework of the new agenda item, with the broadest possible participation by the members of the Committee.

8. Mr. RASHKOW (United States of America) recalled that the agenda item under consideration had been adopted by consensus after long and intensive consultations among delegations representing a wide variety of interests, and that it was intended to provide for an exchange of views on that important matter without - as some delegations had suggested - furnishing a mandate for the negotiation of a new international legal framework. Having made that observation, his delegation was gratified that the Sub-Committee would henceforth be able to proceed to a full exchange of views on that very important topic, and supported without reservation the timetable and programme of work for the item as proposed by the Austrian delegation and adopted by the Legal Sub-Committee at its twenty-eighth session. That approach provided a solid foundation for gaining a fuller understanding of the legal aspects affecting the use of outer space for the benefit of all. However, the success of the work of the Sub-Committee depended on the active participation of every Member State, failing which there would be further sterile debates similar to those that had plagued other agenda items. Consequently, it was essential for Member States to be as responsive as possible to the requests for information on their views regarding that topic. In that connection he wished to refer to document A/AC.105/C.2/16/Add.8, which was the United States contribution concerning the international framework bearing on that agenda item and whose main lines he would proceed to summarize.

9. The multilateral agreements entered into by the United States naturally included the generally recognized agreements developed by the Committee on the Peaceful Uses of Outer Space, namely: the 1967 Outer Space Treaty, which provided the international legal foundation for the peaceful exploration and use of outer space and which also contained provisions (articles I, X, XI and XII) designed to promote international co-operation; the 1968 Agreement on the Rescue of Astronauts, the Return of Astronauts and the Return of Objects Launched into Outer Space; the 1971 Convention on International Liability for Damage Caused by Space Objects; and the 1974 Convention on Registration of Objects Launched into Outer Space.

10. In addition to the legally binding international agreements developed by the Committee on the Peaceful Uses of Outer Space, the United States reply also addressed the Principles Relating to Remote Sensing, adopted by General Assembly resolution 41/65, pursuant to which States carrying out remote sensing activities were called upon to promote international co-operation in those activities and identify how such co-operation might be accomplished. Finally, the United States believed that the United Nations had adopted by consensus certain other resolutions relating to international co-operation in the peaceful uses of outer space which had also established goals and objectives for States involved in the peaceful exploration and use of outer space (for example, part D of General Assembly resolution 1721 (XVI)).

11. Furthermore, the United States had entered into a significant number of other multilateral agreements which bore directly or indirectly on application of the principle forming the subject of the current agenda item, and which were also mentioned in its reply to the Secretary-General. Thus, the 1982 International Telecommunication Convention - currently the basic instrument of the International Telecommunication Union (ITU) - contained provisions relating to international co-operation in outer space (in particular in its articles 4 and 33). That Convention was complemented by the 1979 Radio Regulations and the 1973 Telegraph and Telephone Regulations. The objective of the 1971 INTELSAT Agreement was to achieve "a single global commercial telecommunications satellite system (...) which will provide expanded telecommunications services to all areas of the world", and the body established by that agreement was organized in such a way "as to permit all peoples to have access to the global satellite system (...)". The 1976 Convention that had established INMARSAT was designed to improve communications for distress, for the management of ships and aircraft and radio determination capabilities. The 1988 COSPAS-SARSAT Agreement between Canada, the United States, France and the USSR set the terms and conditions under which those countries would provide a world-wide satellite system as part of the efficient operation of search and rescue activities. Finally, the two 1986 IAEA Conventions on Early Notification of a Nuclear Accident and on Assistance in the Case of a Nuclear Accident or Radiological Emergency also had a bearing on the new item on the Sub-Committee's agenda.

12. Bilateral arrangements were by far the most common international agreement into which the United States entered. In the previous 25 years the United States had concluded hundreds of such agreements covering virtually every area of space technology, such as the development, launching and operation of satellites or the various aspects of remote sensing. More than 30 years had elapsed since the United States had established a programme

providing for international co-operation in global environmental monitoring from space, based on the principle that satellite meteorological data should be openly available. Other agreements involved foreign experiments using United States satellites or other launch vehicles.

13. Having thus completed his summary of the United States reply to the request by the Secretary-General, he said that the response by Member States to that request had in his Government's view been very disappointing and if progress was to be made, a better performance in that regard was necessary. His delegation accordingly proposed that the Sub-Committee recommend that the Committee on the Peaceful Uses of Outer Space request the General Assembly to urge members to respond to the earlier request of the Secretary-General for information on their national legal frameworks and on the international agreements to which they were party. Moreover, in order to facilitate the work of the Sub-Committee and the newly established Working Group to be convened at the following session, it would be useful to have before the Sub-Committee a compilation of the readily available multilateral agreements identified in the replies to the request by the Secretary-General for information on such agreements, as well as a list of the States parties to those agreements.

14. Mr. KOPAL (Czechoslovakia) first expressed his gratification at the election of the Chairman of the Working Group responsible for considering item 5 of the Sub-Committee's agenda, and recalled that the reply by Czechoslovakia to the note verbale from the Secretary-General inviting States Members of the United Nations to submit their views as to the priority of specific subjects under that agenda item had been published in document A/AC.105/C.2/15/Add.9.

15. As it had emphasized in its reply, Czechoslovakia attached great significance to consideration of the new agenda item, which reflected the present status of international relations arising from space activities. The choice of that new item had been a compromise between the wishes of States members of the Group of 77 and the positions of other States or groups of States. As the long title of agenda item 5 that had resulted from the compromise was apparently based on the language of article I of the 1967 Outer Space Treaty, his delegation considered that consideration of the item should start with an analysis of the principle contained in the article in question in order to clarify and fix its legal content, taking into account all the provisions of the Treaty. In his opinion that principle, which stipulated that the exploration and use of outer space "shall be carried out for the benefit and in the interests of all countries, irrespective of their degree of economic or scientific development and shall be the province of all mankind", set certain limits for the freedom of exploration and use by all States recognized in the following paragraph of the same article, and which was moreover qualified by the elements of non-discrimination of any kind, equality and rule of international law. Accordingly, efforts should be made to interpret the expressions "for the benefit and in the interests of" and "the province of all mankind" bearing in mind their close relation to the phrase "the exploration and use of outer space", in order to establish the correct meaning of article I.

16. On the other hand, the title of agenda item 5 differed in some respects from the wording of article I of the 1967 Treaty, with for example the phrase "taking into particular account the needs of developing countries" replacing the expression "irrespective of their degree of economic or scientific development" appearing in the Treaty. His delegation considered it desirable to examine the consequences of that change in order to establish the interrelation between the principle of article I and the intentions of the drafters of the title of agenda item 5.

17. He believed that the main thrust of the discussion on the new agenda item should be to strengthen and further develop international co-operation in the peaceful exploration and use of outer space. That could be done by identifying specific areas in which international co-operation could be progressively developed and by agreeing on appropriate forms of co-operation for each of the areas thus identified. It would also be necessary to explore legal frameworks appropriate to the specific nature of each of the areas concerned. Those questions should naturally all be considered in the particular light of the needs of developing countries, and with particular attention to their specific problems, such as their difficulties in securing access to the results of the exploration and utilization of outer space or in participating directly in space activities. The question of improving the current practice of States in that respect and/or establishing an appropriate legal and institutional framework to streamline such co-operation in space would be the theme for the Legal Sub-Committee and the Committee on the Peaceful Uses of Outer Space when they had completed their analysis of agenda item 5.

18. He drew the attention of the Sub-Committee to the fact that the title of agenda item 5 was broad enough to allow discussion of many aspects relating to the application of article I of the 1967 Treaty. His delegation wished to emphasize the growing interest within the international community for the need to protect the space environment against pollution and in particular, against the hazards arising from space debris. A number of methods could be adopted to combat the undesirable consequences of space activities, including the removal of inactive satellites and prevention of the generation of debris. Increased international co-operation and better co-ordination of space projects might lead to a more rational use of outer space and in particular of its specific parts.

19. Existing legal instruments were far from satisfactory regarding the problem of pollution of outer space in general and that of space debris in particular. In addition, the development of general regulations for the protection of outer space did not seem to be in sight. Nevertheless, a first step might be taken by at least drawing up regulations governing specific aspects of the protection of outer space, including international co-operation to solve the problem of space debris. In that connection the progress made towards the elaboration of principles relating to the use of nuclear power sources in outer space might serve as an example for the drafting of internationally accepted rules dealing with the protection of space against space debris. Such an agreement could in turn serve as a starting point for more comprehensive protection of outer space against any kind of pollution.

20. Mr. FREUDENSCHUSS (Austria) said that the absence of a written reply from the Government of Austria to the request by the Secretary-General for information was not attributable to a lack of interest in item 5 of the Sub-Committee's agenda, to which it attached great importance. Many delegations had, moreover, generously recalled the role played by the Austrian delegation in preparing a compromise proposal on the method of work concerning that item. He expressed his gratification that the responsibility of chairing the Working Group responsible for the examination of item 5 had been entrusted to so competent a person as Mr. Gonzalez.

21. No clear consensus had yet emerged on a specific negotiating mandate with regard to item 5. Article I of the 1967 Outer Space Treaty, on which the title of item 5 was based, was couched in terms so general as to lack clearly defined legal content. However, the fundamental importance of that article was that, unlike the other articles of the Treaty, its scope and potential were not exhausted by specific applications of the principle stated therein. The basic concept embodied in that article, which was the exploration and use of outer space in the common interest of mankind, should remain the inspiration for future efforts to implement that fundamental concept as new problems emerged.

22. Article I of the 1967 Treaty could be viewed as the starting point for a long and arduous journey that was nevertheless potentially rewarding. Within that operation, it would gradually be necessary to define specific forms of co-operation that would be covered, at the appropriate time, by international agreements reached initially in restricted but then in ever expanding spheres. That approach required space law to be conceived not as a set of rigid rules but as a constantly evolving field, one of whose leitmotivs was international co-operation. In other words, the work of the Sub-Committee could be based, as the representative of Nigeria had said (see document A/AC.105/L.2/SR.536), on three pillars: the common interests of mankind, international co-operation and the acceleration of the social and economic development of the developing countries.

23. However, it was necessary to observe two essential precepts in that field. Firstly, in the sphere of the development of international space law, it was important to maintain a balance, as had so far been the case, between progress that was too rapid or too sluggish. Secondly, it was necessary to identify those aspects that lent themselves to regulation and those for which the practices established by scientists and other experts should prevail. As the representative of Brazil had said (A/AC.105/L.2/SR.536), that was an arduous task that should be carried out taking care to avoid any pointless confrontation and giving priority to relevant and constructive ideas. In that respect his delegation shared the Chinese delegation's view that a gradual approach was the only means of achieving tangible results.

24. Finally, he observed that States that were space Powers were apt to think of themselves too exclusively as such, and not as States that might be affected by the undesirable consequences of space activities. In contrast, States that were not involved in the conquest of space saw themselves rather as the potential victims of space activities, and not as potential participants therein. However, those instinctive attitudes were not favourable to the long-term interests of either of those two groups of States. Only when the members of the Sub-Committee managed to reconcile those two points of view would it be possible for them to deal satisfactorily with the issues before them.

25. Mr. CANDIOTI (Argentina), speaking on behalf of the Group of 77, said that at its current session the Legal Sub-Committee was once again striving to achieve the objectives set out in its mandate, in a constructive climate of negotiation thanks to which it was achieving tangible and significant results. He emphasized the importance that developing countries attached to the work of the Sub-Committee, which had led to the drafting of legal instruments that currently covered many aspects of space activity. In view of the scope attained by that activity in the second half of the twentieth century, and of the vital nature it had acquired by virtue of its applications in such specific spheres as that of communications and agriculture, it was hardly surprising that the States members of the Group of 77 perceived it as offering potential for speeding up their development and thus satisfying the needs of their peoples.

26. The Group of 77 considered that the progress achieved in working out principles relating to the use of nuclear power sources in outer space was a good omen for subsequent activities in that field. Although major questions remained to be answered, the agreement achieved in respect of principle 3 opened the path to the emergence of a consensus on the draft principles still under discussion.

27. As far as the delimitation of outer space was concerned, the Group of 77 thought that the new approach suggested by the Soviet delegation could lead to constructive results at future sessions of the Sub-Committee. In the same connection it wished to emphasize the value of the Sub-Committee's consideration of the characteristics and use of geostationary satellite orbit (GSO).

28. With more specific regard to agenda item 5, the Group of 77 had for many years past argued that the issue, to which it attached priority, should be accorded consideration. It was thus gratified at the election of the Chairman of the Working Group set up pursuant to General Assembly resolution 44/46.

29. On the basis of Articles 55 and 56 of the United Nations Charter, of General Assembly resolution 2625 (XXV) and more precisely of article I of the 1967 Outer Space Treaty, and furthermore taking into particular account the needs of developing countries, the Group of 77 considered that it was essential to ensure not only an equitable distribution of the benefits of space activity but also an effective as possible utilization of its resources, in the interests of both current and future generations. In order to ensure for all States equitable access to the benefits of space activity, it was necessary to seek means of enhancing their participation therein in order to promote their development. Those objectives could be achieved by strengthening international co-operation which might make it possible to erect a legal framework that took specific account of the requirements of developing countries.

30. A first step had been made towards handling agenda item 5 by the establishment of a Working Group for the purpose. An outline of the guidelines to be followed in dealing with the subject was contained in the compromise proposal submitted by the delegation of Austria at the twenty-eighth session of the Sub-Committee. Without prejudice to the implementation of the guidelines already defined, the Group of 77 considered that the Working Group should be prepared to examine, without any preconceived

ideas, all proposals put to it either individually or jointly by members of the Sub-Committee. The Group of 77 thus wished to encourage all delegations actively to participate in the deliberations of the Working Group. In order to consider agenda item 5, as well as other questions dealt with by the Committee on the Peaceful Uses of Outer Space, there had to be a constructive exchange of views between the Scientific and Technical and the Legal Sub-Committees. Particular emphasis should be placed on the relationship between the Working Group of the Whole to Evaluate the Implementation of the Recommendations of the Second United Nations Conference on the Exploration and Peaceful Uses of Outer Space (UNISPACE 82) and the Working Group responsible for considering agenda item 5, and on the complementarity that could be established between those two working groups.

31. Finally, with regard to the organization of the Sub-Committee's work, the Group of 77 considered that its effectiveness should not be measured solely in terms of numerical data or statistics, but rather in terms of its contribution towards elaborating the norms required by space activity. Accordingly, the time allotted to the Sub-Committee for its sessions and its methods of work should be on a par with the importance of the issues with which it dealt. At a time when the new Working Group was preparing to begin its activities within the Sub-Committee, it was desirable to consider the possibility of extending the duration of the latter's sessions in the future.

32. In that context, the Group of 77 had taken note of the proposal that both those agenda items should be considered alternately. It considered that the suggestion should be examined in depth, in the light of the experience drawn from the future activities of the Sub-Committee's three working groups.

33. Mr. RAO (India) said that since the adoption, almost a quarter of a century previously, of the Outer Space Treaty which enshrined the fundamental principle that outer space should be explored and used for peaceful purposes and in the interests of all States, the exploitation and use of space had expanded beyond all expectations. Thanks to improved scientific methods and space techniques, space activities were increasingly numerous and their repercussions, either in the sphere of communications or in that of meteorology or remote sensing, were considerable. Unfortunately, those benefits were reaped only by a handful of developed States. For a variety of reasons, in particular historical ones, most of the developing and newly independent countries had remained curious spectators of the space revolution and had drawn no benefits from it. That cleavage within the international community, with on the one hand a small number of "haves" and on the other a multitude of "have nots", clearly showed that the principle set out in article I of the Outer Space Treaty had so far remained a dead letter.

34. The immediate task was to understand why that principle had not been applied, and then to examine ways and means of correcting the inequality by taking into account the needs of the developing countries.

35. In order to do so, it would be necessary to carry out a critical analysis of the relevant national laws, as well as of conventions in force and of other bilateral or multilateral agreements. It would be useful to identify those sectors in which the current instruments gave satisfaction, those in which an improvement was perhaps required and, finally, those in which various obstacles jeopardized the implementation of article I of the Outer Space Treaty. On the basis of such an analysis, the Legal Sub-Committee could

then consider the legal machinery required to enable that principle to be translated into reality, and submit the appropriate constructive proposals. If the deliberations of the Legal Sub-Committee led to a document that defined the required legal machinery and the appropriate ways and means of improving application of the principle under consideration, it went without saying that that document would be a legal instrument. It was however premature to seek to determine the form and contents of such a document or to set, at the present stage, any time limit for the satisfactory conclusion by the Legal Sub-Committee of consideration of all the legal aspects related to the application of that principle.

36. The issue covered by agenda item 5 was of great practical importance. The Sub-Committee whose duty it was to examine the legal aspects thereof should adopt a constructive approach to its task, duly taking into account the interests and rights of the developing countries, and should resolve amicably and in a spirit of compromise any problems that might arise during its work. It was essential for the developing and developed countries to unite their efforts so that outer space would at long last be used in the interests of all mankind, and for them to work together to strengthen international peace and security.

37. International co-operation, which was one of the prerequisites for the effective implementation of the principle contained in article I of the Outer Space Treaty, should be intensified. Efforts were necessary, in particular, to ensure that all countries could participate in space activities on an equal footing and acquire the necessary technical and scientific infrastructures, to organize a regular transfer of techniques and know-how without discrimination or restriction, to develop the exchange of information and to train specialists.

38. As a developing country involved in space activities, India ascribed great significance to consideration of agenda item 5 and had no doubt that it would provide an opportunity for a constructive debate among all the members of the Sub-Committee. His delegation was also convinced that the Working Group due to meet for the first time at the following session under the chairmanship of the representative of Chile, Mr. Gonzalez, who was both an expert on space law and an experienced diplomat, would be able to play an extremely valuable role.

39. Mr. COTAN (Indonesia) expressed his satisfaction at the establishment of the Working Group to consider agenda item 5 and said that he had no doubt that under the enlightened guidance of Mr. Gonzalez it would be able to draw up a set of legal principles to ensure the distribution among all States of the benefits accruing from the exploration and use of space.

40. Indonesia was actively involved in promoting international co-operation in space. Thus it had established links for co-operation with the United States of America in order to operate the PALAPA B2R satellite and hence to improve its telecommunication capability. Indonesia had also concluded a number of other bilateral and multilateral agreements, including: an agreement on the utilization of the PALAPA system with Malaysia, Thailand, the Philippines and Singapore; a technical and industrial co-operation agreement with the United States (1978); an agreement with Japan providing, inter alia, for a feasibility study for the installation of radar equipment

on Indonesian territory and for remote sensing devices applied to fisheries; an agreement with the Federal Republic of Germany in the spheres of remote sensing, wind energy and communications; and an agreement with the Netherlands regarding research on the construction of a remote sensing satellite.

41. Indonesia was also a party to several legal instruments relating to space: the International Telecommunication Convention (1982); the 1969 Agreement Relating to the International Telecommunications Satellite Organization (INTELSAT); the 1986 Convention on the International Maritime Satellite Organization (INMARSATT); the 1963 Treaty banning nuclear weapon tests in the atmosphere, in outer space and under water; and the 1986 Treaty on the Non-Proliferation of Nuclear Weapons.

42. The foregoing reflected the interest of Indonesia in the principle that the exploration and use of outer space should be carried out for the benefit and in the interests of all States, particularly the developing countries, a principle whose effective materialization required genuine international co-operation. Such international co-operation was a prime necessity if the existing scientific and technological gap between the developed and the developing countries was to be bridged and a better world built.

43. The Legal Sub-Committee should thus apply itself to developing and embodying in an appropriate legal instrument a set of principles intended to secure, through the strengthening of international co-operation, equitable access by all States to the benefits deriving from the exploration and the use of space.

44. Mr. BOYER (France) recalled that France was co-operating with several countries in space activities, and had for example concluded major co-operation agreements with the Soviet Union, the United States of America and Japan. Since the 1960s it had also pursued programmes of co-operation with Brazil, Argentina, India, Indonesia and Saudi Arabia. France was moreover an active member of the extremely dynamic European Space Agency.

45. To illustrate what France was doing in the field of co-operation in space, he said that he would restrict himself to a summary of activities in a specific sector, that of remote sensing, which was of interest to both the Scientific and Technical and the Legal Sub-Committees.

46. In Africa, France was providing support to the Regional Remote Sensing Centre in Ouagadougou, Burkina Faso (secondment of experts, training courses and assistance with projects). It was also either participating in or supporting the activities of the Permanent InterState Committee for Drought Control in the Sahel, whose headquarters were at Niamey, Niger. France was likewise participating in the work of the Regional Centre for Training on Aerospatial Surveys and the Regional Centre for Services in Surveying, Mapping and Remote Sensing, whose headquarters were at Nairobi, Kenya. It had signed bilateral co-operation agreements with the Government of Kenya for the secondment of experts, the provision of equipment and the implementation of projects. It was also involved in co-operation with Morocco, Tunisia (where it was contributing to the establishment of national remote sensing centres), Mozambique (secondment of experts to the National Directorate of Geography and Surveying), Zimbabwe and Djibouti.

47. In Asia, France was lending support to the Asian Institute of Technology at Bangkok (provision of equipment, secondment of experts and grant of training fellowships). It was participating in work carried out by the Economic and Social Commission for Asia and the Pacific in the area of remote sensing, and had signed co-operation agreements with Pakistan, India, Indonesia (feasibility study for a SPOT receiving station), Viet Nam (applications project based on SPOT data) and Thailand. It should be noted that, in pursuing its co-operation activities, France scrupulously applied the principle of non-discrimination.

48. In Latin America, France had signed co-operation agreements with Argentina, Brazil, Ecuador, Mexico (training seminars) and Costa Rica (secondment of experts).

49. That list of activities clearly illustrated how it was possible to advance from scientific and technical studies and the development of legal régimes to practical applications in the field. In that connection his delegation wished to stress the need for the Legal Sub-Committee to base its work on specific concepts, and supported the proposal by the Group of 77 for including the Scientific and Technical Sub-Committee in the examination of item 5. To conclude, he emphasized that all the international instruments relating to the exploration and use of outer space stipulated that such use could only be for peaceful purposes, and made specific provision for the benefits to be shared, i.e. for participation in the results of space activities.

51. Mr. WULF (Sweden) indicated, with regard to national legislation and international agreements relating to the principle that the exploration and use of outer space should be carried out for the benefit and in the interests of all States, taking into particular account the needs of developing countries, that the information provided by Sweden to the Secretariat and hence communicated to the Sub-Committee was available for consultation. Sweden had also entered into bilateral agreements on a variety of subjects - space research and technology, remote sensing, data processing and distribution, etc. - with such bodies as the Indian Space Research Organization and the Chinese State Science and Technology Commission. In the field of international co-operation, Sweden was a member of the European Space Agency.

52. Swedish space activities were carried out in the spirit of article I of the 1967 Outer Space Treaty, which stipulated that the exploration and use of outer space should be carried out for the benefit and in the interests of all countries. In that context he also mentioned the Principles Relating to Remote Sensing of the Earth from Space, adopted by the General Assembly in 1986, and which, although they imposed no obligations on States, constituted very useful guidelines and did in many respects encourage States to promote international co-operation.

53. Sweden possessed broad experience and considerable know-how in the field of remote sensing and geographical information systems that could be made available to developing countries and also extended to personnel training. One example of the activities carried out in that sphere was Sweden's contribution to the United Nations Programme on Space Applications, in the form of a training course on remote sensing for educators to be held in Sweden during the current year.

54. His delegation considered that the discussions on agenda item 5 illustrated the desirability of seeking a concrete and practical approach to international co-operation in the area concerned, which should be the task of the Working Group set up for the purpose.

55. Mr. VERESHCHETIN (Union of Soviet Socialist Republics) said he hoped that the Working Group entrusted with the new agenda item would be able to begin to work constructively as from the following year and, pursuant to its terms of reference, to consider the issues and the relevant proposals made by States. His delegation wished to draw the attention of the Sub-Committee to document A/AC.105/C.2/16/Add.5 in which the USSR, in response to the request by the Secretary-General, had presented detailed information on the legal conditions of its co-operation with various countries in the field of the exploration and use of outer space. That document provided a general illustration of the numerous forms of co-operation undertaken within the framework of bilateral programmes in the scientific field and in various areas of the practical application of space exploration technology.

56. His delegation wished to point out that over the previous two years the USSR had concluded 10 new intergovernmental agreements on various forms and types of co-operation: exchange of scientists, specialists and students; participation in various study and research programmes; exchange of experimental data; scientific and technical information; exchange of instruments and equipment; implementation of joint projects for the construction and launch of objects into space; a joint orbital launch experiment; exchange of data and co-operation among bodies and enterprises in different countries. Moreover, the USSR had granted and would continue to grant dozens of fellowships to the developing countries, thereby enabling their citizens to work with various scientific bodies in the USSR.

57. His delegation wished to assure the Sub-Committee that it was in favour of the harmonious development of international co-operation for the exploration and peaceful use of outer space, both in the multilateral and the bilateral spheres. The USSR was currently negotiating at various levels and with various countries, including the developing countries, with a view to signing new agreements.

58. He was of the opinion that the discussions on item 5 should address the development of international co-operation and the search for new forms and mechanisms for such co-operation, and that attention should first of all be given to drawing up the relevant legal norms within the framework of the Sub-Committee's terms of reference. He hoped that the exchange of views would make it possible in the future to put forward specific proposals for improving the machinery for international co-operation in outer space and that a growing number of States, including developing countries, would contribute thereto. With regard to the initial phase of activities connected with item 5, he believed it desirable to undertake an overall study of the norms of international space law regarding the exploration and use of outer space for the benefit of and interests of all States. It would then be possible to draw conclusions as to the need to give specific form to those norms, to render them more systematic and, if necessary, gradually to develop them.

59. The Soviet delegation supported the proposal by the Group of 77 for the institution of co-operation with the Scientific and Technical Sub-Committee regarding consideration of item 5. Finally, it shared the view of other delegations that work on item 5, in particular the elaboration of legal norms on the basis of the results achieved, would take time and effort on the part of all delegations, and expressed its willingness to play an active part in those efforts.

60. Mr. GONZALEZ (Chile) drew attention, in connection with the remarks made by delegations on agenda item 5, to the importance of the statement made on behalf of the Group of 77, which contained an innovative contribution regarding the means of bringing about effective international co-operation in space and the need for it to be institutionalized. The response by the delegation of the United States clearly constituted a noteworthy contribution that demonstrated the desire to expand such co-operation at multilateral level. His delegation also subscribed to the legal propositions enunciated by the Czechoslovak delegation, and recalled that the French delegation had stressed the need for all countries to share in the benefits of space exploration. His delegation also echoed the views of the Soviet representative on the need to carry out a full study of the norms of space law from the viewpoint of future developments in that field, in accordance with the title of agenda item 5, which reflected article I of the 1967 Outer Space Treaty while adding the legal aspect to the notion of equity.

61. His delegation had no doubt that consideration of the legal aspects of article I of the Treaty implied the need to analyse the basic concepts contained in that article and to specify their content with respect, for example, to the difference between the exploration and use of outer space and the interpretation of the principle of freedom in space in connection with articles 2 and 3 of the Treaty - which would entail an examination of the evolution of international law in the light of the Vienna Convention on the Law of Treaties. It would perhaps be valuable to give a more precise definition to the notion of the "province of all mankind", which was to provide the framework for international co-operation in space.

62. He further recalled that the Czechoslovak delegation had emphasized the need to link discussion of item 5 with environmental considerations, as international environmental law already contained firmly established norms that could provide food for thought in that area, in particular the need to safeguard the interests not only of the present but also of future generations. It was thus important to take into account the various elements present in other branches of contemporary international law in order to establish the required interrelationships and achieve a genuinely global view.

63. His delegation drew particular attention to the explicit mandate entrusted to the Sub-Committee by virtue of the very wording of agenda item 5, which called for consideration of the legal aspects of article I of the 1967 Outer Space Treaty, and stressed the political and legal necessity to take into account the needs of developing countries in that respect.

64. Mr. RASHKOW (United States of America) said that he wished to thank the Secretariat for having provided delegations with the relevant chapters of the report of the Advisory Committee on Administrative and Budgetary Questions (ACABQ) relating to the venue of the Legal Sub-Committee's future sessions. His delegation intended to give close attention to the question in consultation with other delegations at the following session of the Committee on the Peaceful Uses of Outer Space, and unreservedly shared the conclusion of ACABQ that there was no overriding reason why the sessions of the Legal Sub-Committee should continue to be held in Geneva.

The meeting rose at 12.55 p.m.

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COMMITTEE ON THE PEACEFUL USES OF OUTER SPACE

LEGAL SUB-COMMITTEE

Twenty-ninth session

SUMMARY RECORD OF THE 538th MEETING

Held at the Palais des Nations, Geneva,
on Friday, 20 April 1990, at 10.30 a.m.

Chairman: Mr. MIKULKA (Czechoslovakia)

CONTENTS

Adoption of the report of the Legal Sub-Committee on the work of its twenty-ninth session

Closure of the session

This record is subject to correction.

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GE.90-60829/6372A

The meeting was called to order at 11.05 a.m.

ADOPTION OF THE REPORT OF THE LEGAL SUB-COMMITTEE ON THE WORK OF ITS TWENTY-NINTH SESSION (A/AC.105/C.2/L.179 and Add.1 to 7)

A/AC.105/C.2/L.179/Add.2

1. Mr. FREUDENSCHUSS (Austria), in the absence of Mr. Winkler (Austria), the Chairman of the Working Group on agenda item 3, presented the report of the Working Group.

2. The CHAIRMAN invited the Sub-Committee to take note with appreciation of the report by the Chairman of the Working Group on agenda item 3, which would be annexed to the report of the Legal Sub-Committee.

3. It was so decided.

4. Concerning the adoption of the report of the Working Group on agenda item 3, Mr. RASHKOW (United States of America) stressed the considerable progress that had been achieved, particularly with regard to principle 3, and pointed out that the new draft principle reflected general concepts and practices that were currently being applied by the United States for its space programme. In that respect, the United States welcomed the flexibility afforded by the new draft through its use of general concepts, such as that of defence in depth. That approach had the advantage of avoiding the pitfalls of detailed standards. At the present stage, his delegation believed that the new principle 3 did represent a basis for consensus, although - as it had often stated - before a final draft text could be recommended to the Committee and the General Assembly it reserved the right to review the complete set of draft principles in order to consider their interrelationships and to ensure that the text was balanced as a whole. Finally, he reminded the Sub-Committee that it had still not been decided whether, with regard to all the draft principles, it was appropriate to use the term "should" rather than "shall" to reflect the recommendatory character of those principles when eventually adopted.

5. Mr. VERESHCHETIN (Union of Soviet Socialist Republics) considered that tangible progress had been achieved by reaching a consensus on principle 3 and also with respect to the other principles discussed by the Working Group, and that that progress had been the result of co-operation and mutual comprehension on the part of all delegations. His delegation shared the view that, in their definitive form, the principles should all be consistent and it reserved its judgement concerning the opinion which had just been expressed regarding the preliminary consensus. There was a consensus and, even if it needed to be studied again when the principles were definitively adopted, the general debate should not be reopened. The principles had been adopted by consensus and there was no reason to study them again, although that did not exclude the possibility of re-examining questions if needed.

A/AC.105/C.2/WG/DEF-GSO(1990)/DR.1 - A/AC.105/C.2/L.179/Add.6

6. Mr. ZAWELS (Argentina) Chairman of the Working Group on agenda item 4, presented the report of the Working Group and explained that the Group had held five official and two informal meetings.

7. The CHAIRMAN invited the Sub-Committee to take note with appreciation of the report of the Chairman of the Working Group on agenda item 4, which would be annexed to the report of the Legal Sub-Committee.

8. It was so decided.

9. Mr. APUNTE (Ecuador) said that his delegation had been very much interested in the broad debate on agenda item 4 and wished to reaffirm the opinion it had expressed to the Legal Sub-Committee and the Working Group, which could be summarized in the following way: (i) there was a direct link between the needs, interests and rights of developing countries, particularly equatorial countries, and the fact that the geostationary orbit was a limited natural resource; (ii) when considering the definition and delimitation of outer space, it was necessary to define a sui generis legal régime governing the rational and equitable use of the orbit, on the understanding, moreover, that it was the Legal Sub-Committee, and not the International Telecommunication Union (ITU), that would draw up political and legal guidelines in that field; (iii) it was necessary to take into account the particular geographical location of some countries, including equatorial countries, as well as the interests of all developing countries, in order to ensure that they had access to the geostationary orbit and could utilize the frequency spectrum; to that end, it was essential to define the concept of "equitable access", due allowance being made for the aforementioned criteria.

10. Mrs. GARCIA (Mexico) said that, before adopting its report, the Legal Sub-Committee would do well to consider the duties assigned to it.

11. For some time there had been talk of "revitalizing" the Committee on the Peaceful Uses of Outer Space and its two Sub-Committees, and a set of proposals had been made concerning the timetable of meetings, the agenda and the rules of procedure. Her delegation was surprised that that revitalization appeared to be linked to proposals aimed at reducing the number of meetings, removing items from the agenda and adopting consensus as a rule of procedure, instead of proposals designed to ensure that all exploration and utilization of outer space was conducted in the interests of maintaining international peace and security and promoting international co-operation and understanding.

12. Her delegation wished to point out that the Committee and its two Sub-Committees were subsidiary bodies of the General Assembly, and therefore governed by the same rules of procedure. It therefore desired to reiterate its opposition to the application of the rule of consensus, which, in practice, tended to be tantamount to a right of veto.

13. Given that the year 1992 would mark the twenty-fifth anniversary of the Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies (1967 Outer Space Treaty) and would also be the International Year of Space, the Legal Sub-Committee would have an appropriate opportunity to assess the results of its work since its establishment. In so doing the Sub-Committee should ask itself why not one of the five international treaties governing the use of outer space, which had been drawn up in the Sub-Committee itself, had enjoyed universal accession, despite repeated appeals from the General Assembly. It might also ask itself why only six States - and those were far from being the

States with the greatest capacity for space activities - had acceded to all five treaties. Lastly, it might enquire why was it that, more than 10 years after its adoption, the Agreement Governing the Activities of States on the Moon and Other Celestial Bodies had been ratified by only seven States.

14. Her delegation therefore believed that the Sub-Committee should study the possibility of including on its agenda for future sessions an item providing for an examination of the international treaties on outer space, with a view to considering measures to achieve universal application of the legal régime governing it.

A/AC.105/C.2/L.179 and Add.1 to 7

15. The CHAIRMAN pointed out that the draft report of the Legal Sub-Committee comprised documents A/AC.105/C.2/L.179 and Add.4 (Introduction), Add.1 (agenda item 3), Add.3 (agenda item 4) and Add.5 and 7 (agenda item 5). He suggested that the Sub-Committee should begin by examining document A/AC.105/C.2/L.179 paragraph by paragraph.

16. Mr. BASNAYAKE (Secretary of the Legal Sub-Committee) said that, after the words "on 4 April" in the third line of paragraph 9, the words "and at its 534th meeting, on 12 April," should be inserted; then, in the fourth line, the word "and" after the word "Spain" should be replaced by a comma and, after the word "Jamahiriya", the words "and Peru" should be inserted. The same correction should be made to the eighth line of paragraph 9.

17. In sub-paragraph (d) of paragraph 11, the semi-colon after "Sub-Committee" should be deleted and the following inserted: ", and decided at its 535th meeting that Mr. R. Gonzalez, the representative of Chile, should serve as Chairman of the Working Group;".

18. Paragraphs 1 to 14, constituting the whole of document A/AC.105/C.2/L.179, were adopted.

A/AC.105/C.2/L.179/Add.4

Paragraphs 1 and 2

19. Paragraphs 1 and 2 were adopted.

20. The CHAIRMAN said he understood that a paragraph 2 (b) was being considered, but that a consensus had not yet been reached. He therefore suggested that the Sub-Committee should continue to study the document paragraph by paragraph, subject to the possible insertion of an additional paragraph at a later date.

Paragraphs 3 to 7

21. Paragraphs 3 to 7 were adopted.

A/AC.105/C.2/L.179/Add.1

Paragraphs 1 to 4

22. Paragraphs 1 to 4 were adopted.

Paragraph 5

23. Mr. TETU (Canada) pointed out that his delegation had submitted a working paper A/AC.105/C.2/L.154/Rev.6, dated 17 April 1990, which was the sixth revision of the draft principles contained in document A/AC.105/C.2/L.154 of 25 March 1986 and reflected the views expressed at the current session. Since principles 2, 4, 8, 9, 11 and 12 were to be considered at the next session of the Sub-Committee, his delegation wished the working paper to be annexed to the report of the Sub-Committee on the current session. At the same time, it wished to propose that an informal meeting of all interested delegations should be held during the first week of the next session of the Committee on the Peaceful Uses of Outer Space in June 1990, in order to hold a preliminary discussion on the document in question before the following session of the Legal Sub-Committee. He therefore proposed that, after paragraph 5, a paragraph 5 (b) should be inserted, to read as follows:

> "The Sub-Committee agreed to annex to its report the working paper submitted by Canada on 17 April 1990 as published in document A/AC.105/C.2/L.154/Rev.6. The Sub-Committee also agreed to the suggestion put forward by the delegation of Canada that an informal meeting of the interested delegations be held in New York during the first week of the session of the Committee on the Peaceful Uses of Outer Space next June, with a view to proceeding to a first exchange of views on the above-mentioned document and to paving the way for further constructive work at the next session of the Sub-Committee."

24. Paragraph 5 and the new paragraph 5 (b) were adopted.

Paragraph 6

25. Mr. RASHKOW (United States of America) proposed that the summary record of the current meeting should be included in those mentioned in paragraph 6, so that the remarks made during the meeting would be taken into account.

26. Paragraph 6 was adopted with the proposed amendment.

Paragraph 7

27. Mr. TETU (Canada) was of the opinion that the report of the Sub-Committee should reflect the successful outcome of the work of the Working Group on agenda item 3 and suggested that, at the end of paragraph 7, the following sentence should be added: "The Sub-Committee noted with particular satisfaction that a principle 3 relating to Guidelines and Criteria for Safe Use was unanimously agreed to by the Working Group at its current session."

28. Paragraph 7, as amended, was adopted.

A/AC.105/C.2/L.179/Add.3

Paragraphs 1 to 4

29. Paragraphs 1 to 4 were adopted.

Paragraph 5

30. Mr. APUNTE (Ecuador) suggested that the summary records mentioned in paragraph 5 should include that of the current meeting in order to take account of the remarks made thereat.

31. Paragraph 5, as amended, was adopted.

Paragraphs 6 and 7

32. Paragraphs 6 and 7 were adopted.

A/AC.105/C.2/L.179/Add.5

Paragraphs 1 to 14

33. Paragraphs 1 to 14 were adopted.

Paragraph 15

34. Mr. HE Qizhi (China) said that his delegation wished to propose certain amendments to the paragraph in question, since it reflected the views which his Government had expressed. He therefore proposed that, in the second sentence of the paragraph, the words "taken into account" should be replaced by "taken as the basis of discussion". His delegation also proposed that the last two sentences of the paragraph should be rephrased to read: "Thirdly, the provision of services by international multilateral agencies (such as WMO through its meteorological network) and international co-operation fostered through bilateral international agreements, such as in the field of remote sensing. Fourthly, the Sub-Committee should have as its final goal the elaboration of a legal document to develop and improve the common benefit principle."

35. Paragraph 15, as amended, was adopted.

Paragraph 16

36. Paragraph 16 was adopted.

Paragraph 17

37. Mr. RASHKOW (United States of America) said that his delegation wished to add to the end of the paragraph a sentence reflecting a suggestion it had made during the debate. The sentence would read as follows: "The Sub-Committee recommended that the Secretary-General re-issue his request to Member States for information on their national legal framework and international agreements noted in paragraphs 3 and 4 of this report." Such a suggestion might make it possible for the Sub-Committee and particularly the newly-created Working Group to have a greater number of replies to the Secretary-General's previous request available for consideration at its next session.

38. Paragraph 17, as amended, was adopted.

A/AC.105/C.2/L.179/Add.7

Paragraph 18

39. Paragraph 18 was adopted.

Paragraph 19

40. Mr. RAO (India) proposed that in the first sentence the phrase "equitable access to outer space," should be inserted after the words "in this connection".

41. Paragraph 19, as amended, was adopted.

Paragraph 20

42. Mr. RAO (India) said that his delegation proposed that, in the final sentence, between the words "the view was also expressed that" and the words "it might not be appropriate", the following phrase should be inserted: "it was only natural that the Legal Sub-Committee should eventually, at the conclusion of its consideration of the item, produce a document which would be a legal instrument although ...". At the end of that sentence, the words "of any document which might emerge from the work" would be replaced by the words "of any such instrument".

43. Paragraph 20, as amended, was adopted.

Paragraph 21

44. Mr. RASHKOW (United States of America) proposed that, in the second sentence of the paragraph, the words "The view was also expressed that it would be useful to have before the Sub-Committee" should be replaced by "The Sub-Committee decided that it would be useful to have before it", since he thought that that was a closer reflection of the discussion on that question.

45. Mr. RAO (India) proposed that, after the words "appropriate modalities" in the fourth line of the paragraph, the words "and legal mechanisms" should be inserted.

46. Paragraph 21, as amended by the delegations of the United States and India, was adopted.

Paragraph 22

47. Mr. KOPAL (Czechoslovakia), pointing out that the view presented in the paragraph was that of the Czechoslovak delegation, suggested that the word "might" in the second line of the paragraph should be replaced by the word "should".

48. Paragraph 22, as amended, was adopted.

Paragraph 23

49. Mr. ZAWELS (Argentina), speaking on behalf of the Group of 77 whose views were reflected in that paragraph, proposed that the words "set of principles" should be replaced by "legal framework" in the fourth sentence of the paragraph.

50. Paragraph 23, as amended, was adopted.

51. Mr. GONZALEZ (Chile) proposed that, so that document A/AC.105/C.2/L.179/Add.7 would take into account an opinion expressed by his delegation, a new paragraph should be added at the end of the document, as paragraph 24, or at another point considered appropriate by the Secretariat. The paragraph would read as follows:

> "The view was expressed that the new legal question on the agenda constituted a modified version of article I of the 1967 Outer Space Treaty, in so far as it specifically singled out developing countries for priority attention. That being so it was stated that space activities should be conducted on an equitable basis, which implied, inter alia, that the countries in question should, in particular, be guaranteed access to a share of the benefits of such activities."

52. The text proposed by the delegation of Chile was adopted as paragraph 24 of document A/AC.105/C.2/L.179/Add.7.

A/AC.105/C.2/L.179/Add.4

Paragraph 2 (b)

53. The CHAIRMAN invited interested delegations to consult with each other during a suspension of the meeting, with a view to revising the text for paragraph 2 (b) to be inserted in document A/AC.105/C.2/L.179/Add.4. The text could then be adopted by consensus.

The meeting was suspended at 12.35 p.m. and resumed at 1 p.m.

54. The CHAIRMAN said that, following informal consultations between various groups of States, the following compromise text had been proposed for paragraph 2 (b) to be inserted in document A/AC.105/C.2/L.179/Add.4:

> "The Sub-Committee expressed its appreciation for the work done by the Secretariat in proposing the schedule of work for the current session of the Sub-Committee as contained in document A/AC.105/C.2/L.176 and for the proposals for improving the Sub-Committee's organization of work, contained in the letter dated 31 January 1990 from Mr. S. Suja, former Chairman of the Sub-Committee, to Mr. E. Wyzner, United Nations Under-Secretary-General for Conference Services and Special Assignments. In that regard, the Sub-Committee agreed that a similar organization of work as agreed upon at the current session would again serve as a basis for organizing the work of the Sub-Committee's thirtieth session. The Sub-Committee further agreed that the order of consideration of agenda items at the next session of the Sub-Committee should be studied if found necessary."

55. The CHAIRMAN said that, if there were no objections, he would assume that the Sub-Committee agreed to adopt the text which he had just read out as paragraph 2 (b) of document A/AC.105/C.2/L.179/Add.4.

56. It was so decided.

57. The report of the Legal Sub-Committee on the work of its twenty-ninth session (A/AC.105/C.2/L.179 and Add.1 to 7), as amended, was adopted as a whole.

CLOSURE OF THE SESSION

58. The CHAIRMAN said that he hoped that all the members of the Legal Sub-Committee would agree that the session had been a success. The Sub-Committee had indeed made significant progress on some matters and had prepared the ground for moving ahead on others in the future.

59. With regard to the elaboration of draft principles concerning the use of nuclear power sources in space, the Sub-Committee had been able, with the help of the Chairman of the Working Group on agenda item 3, to achieve consensus on principle 3 entitled "Guidelines and Criteria for Safe Use". Given the key role of that principle in the set being elaborated, the consensus was a promising sign that work on that agenda item would soon be concluded.

60. The discussion of matters relating to the definition of outer space and the geostationary orbit, conducted with the help of the Chairman of the Working Group on agenda item 4, had not led to the adoption of any consensus texts. However, discussions in the Working Group on that item had proved constructive, and provided a useful basis for future work and, it was to be hoped, progress on agenda item 4.

61. The members of the Sub-Committee would undoubtedly agree, that there had been a positive debate on agenda item 5. The spirit of co-operation, accommodation and compromise, which permeated the Sub-Committee, would help to achieve progress in that new field of the Sub-Committee's work for the benefit of all mankind.

62. Lastly, he wished to emphasize his conviction, which, he was sure, was shared by the entire membership, that the principle of adopting all decisions by consensus played a determining role in making the results of the Sub-Committee's work universally acceptable. He also firmly believed that it was the only practical method of attaining the goals entrusted to it by the General Assembly.

63. Having thanked the members of the Sub-Committee for their efforts and expressed his gratitude to the members of the Secretariat, the CHAIRMAN declared the twenty-ninth session of the Legal Sub-Committee closed.

The meeting rose at 1.15 p.m.